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PROTECTION OF THE OCEANS AND ALL KINDS OF SEAS, INCLUDING ENCLOSED AND SEMI-ENCLOSED SEAS, AND COASTAL AREAS AND THE PROTECTION, RATIONAL USE AND DEVELOPMENT OF THEIR LIVING RESOURCES

Conservation and management of living resources of the high seas

Principles and measures for an effective regime based on the United Nations Convention on the Law of the Sea

Proposal submitted by Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Canada, Cape Verde, Chile, Comoros, Cook Islands, Costa Rica, Cuba, Dominica, Fiji, Gambia, Guinea, Guinea-Bissau, Guyana, Iceland, Jamaica, Kenya, Kiribati, Maldives, Marshall Islands, Mauritania, Mauritius, New Zealand, Papua New Guinea, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Seychelles, Solomon Islands, Sri Lanka, Tonga, United Republic of Tanzania and Vanuatu

BACKGROUND

1. Pursuant to the United Nations Convention on the Law of the Sea, States fishing on the high seas have three fundamental obligations with respect to the conservation and management of living resources:

(a) To adopt with respect to their nationals measures for the conservation of the living resources (art. 117);

(b) To cooperate with other States in taking such measures (art. 117);

(c) To seek to agree with the coastal States on measures necessary to ensure the conservation of straddling stocks (arts. 116 and 63 (2)) and to cooperate in the conservation of highly migratory species (art. 64).

2. Articles 119 and 120 provide obligations ancillary to these fundamental obligations.

3. Experience shows that, while constituting a sound framework, in a number of high seas areas these obligations are not being implemented as intended. In these areas there are problems of unregulated fishing, vessel reflagging to escape controls, harmful fishing practices such as driftnetting, overfishing, lack of surveillance, control and enforcement and, in general, lack of the required cooperation with other States. Resort to these harmful practices is increasing and may spread to other areas of the high seas.

4. It is necessary to identify and achieve international agreement on principles and measures, consistent with the Convention, to eliminate these practices and thus provide for an effective conservation regime on the high seas giving full effect to the Convention's provisions. Following is a proposed list of such principles and measures for inclusion in Agenda 21.

PRINCIPLES

(a) High seas fishing must be carried out only on the basis of sustainable ecologically sound practices, effectively monitored and enforced, in order to ensure conservation and promote optimum utilization of the living resources.

(b) In order to ensure sustained conservation of those resources, fisheries management regimes must effectively maintain the ecological relationship between dependent and associated populations, prevent any decrease in the size of harvested populations below those necessary to ensure their stable recruitment, and avoid adverse impacts or changes in the marine ecosystem.

(c) On the high seas, States fishing a stock which straddles the 200-mile limit of a coastal State, or highly migratory species which are found within that limit, must take all measures necessary to give effect to the special interest and responsibility of the coastal State concerning the portion of the stock outside the 200-mile limit and in the highly migratory species while outside that limit.

(d) High seas fishing must not have an adverse impact on the resources under the jurisdiction of coastal States.

MEASURES

1. States must effectively monitor and control fishing activities of their nationals, vessels and crews thereof on the high seas to ensure the conservation of the resources, compliance with applicable conservation and management rules, complete and accurate reporting of catches and effort, and avoidance of incidental catch.

2. States must make available to appropriate international organizations all data relating to catches on the high seas as well as scientific data on these catches. States fishing the same stocks must also cooperate through the exchange of such data.

3. States must ensure that vessels authorized to fly their flag comply with the conservation and management rules adopted by competent international organizations or, where no such organization exists, through other international arrangements.

4. States must establish penalties under domestic law, and take legal action against their nationals, vessels and crews thereof, for any violation of rules adopted by competent international organizations or, where no such organizations exist, through other international arrangements, whether such violations are committed directly or through resort to techniques such as the reflagging of vessels in foreign countries. States must take similar action for any violation of domestically instituted conservation and management rules.

5. States whose nationals or vessels fish in the same area of the high seas must cooperate to establish international arrangements or organizations to ensure sustainable and optimally developed fisheries through effective conservation and management regimes, including as appropriate reciprocal inspection and enforcement systems and dispute settlement mechanisms.

6. States must cooperate with competent international organizations or, where such organizations do not exist, through other international arrangements, and ensure that their nationals, vessels and crews thereof, do not violate rules adopted pursuant to such regimes.

7. In areas of the high seas where a management regime has been agreed within the framework of a competent international organization or, where such an organization does not exist, through another international arrangement, States must ensure that high seas fishing is undertaken only in accordance with the conservation and management rules adopted under that organization or arrangement.

8. With respect to a stock occurring both within the exclusive economic zone of a coastal State and in an area of the high seas adjacent to it, the management regime applied to the stock must provide for consistency of the measures applied on the high seas with those applied by the coastal State within its exclusive economic zone.

9. With respect to a highly migratory species, the management regime on the high seas must fully recognize the sovereign rights of the coastal State in its exclusive economic zone and, taking into account the special interest of the coastal State in the species while outside its zone, avoid an adverse impact on the resource within that zone.